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FEB 17 2010

OFFICE OF PETITIONS

In re Application of	:	
MOYER et al.	:	LETTER REGARDING PATENT
Application No. 09/912,072	:	TERM ADJUSTMENT
Filed: July 24, 2001	:	
Attorney Docket No. 5051-445	:	

This letter is in response to the LETTER REGARDING PATENT TERM ADJUSTMENT filed December 2, 2009. Pursuant to applicants' duty of good faith and candor to the Office, applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy.

The request for review of the determination of patent term adjustment is **GRANTED to the extent indicate herein.**

The Office has updated the PALM and PAIR screen to reflect that the Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is **zero (0) days**. A copy of the updated PAIR screen is enclosed.

On October 6, 2009, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment to date is 551 days. On December 2, 2009, applicants submitted the instant comment.

Applicants request that the Office review the periods of adjustment for Office delay of 337 days and 215 days. Applicants do not state a specific basis for requesting these periods of adjustment be reviewed for accuracy.

A review of the application history confirms that the entry of the periods of adjustment for Office delay of 337 days and 215 days are incorrect.

As to the period of adjustment of 337 days, it is noted that the failure of the Office to respond to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken is a ground for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999. 37 CFR 1.702(a). The phrase the date on which "an appeal was taken" in 35 U.S.C. 154(b)(i)(A)(ii) means the date on which an appeal brief (and not a notice of appeal) was filed. The phrase "appeal brief in compliance with 37 CFR 1.192" requires that: (i) the appeal brief fee (37 CFR 1.17(c)) be paid (37 CFR 1.192(a)); and (2) the appeal brief complies with 37 CFR 1.192(c)(i) through (c)(9). Accordingly, 37 CFR 1.703(a)(4) pertains to the provisions of 35 U.S.C. 154(b)(i)(A)(ii) and specifies that the period of adjustment for Office delay includes the number of days, if any, in the period beginning on the day after the date that is four months after the date an appeal brief in compliance with § 1.192 was filed and ending on the date of mailing of any of an examiner's answer under § 1.193, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first.

In this instance, an appeal brief was filed on January 29, 2007. On April 12, 2007, a notification of non-compliant appeal brief was mailed. On May 2, 2007, a second appeal brief was filed. On August 8, 2007, a notification of non-compliant appeal brief was mailed. On August 20, 2007, a third appeal brief was filed. On November 2, 2007, a notification of non-compliant appeal brief was mailed. On November 12, 2007, a fourth appeal brief was filed. On January 28, 2008, a notification of non-compliant appeal brief was mailed. On February 1, 2008, a corrected appeal brief was filed. On April 30, 2008, an examiner's answer under § 1.193 was mailed within four (4) months of February 1, 2008, the date the appeal brief in compliance with 37 CFR 1.192 was filed. Accordingly, there was no basis for entry of a period of adjustment for Office delay pursuant to 37 CFR 1.703(a)(4). The period of adjustment of 337 days is being removed.

As to the period of adjustment of 215 days, the record does not reveal any circumstances that constitute a failure by the Office to take certain action within a specified time frame. See 35 U.S.C. 154(b)(1)(A). Accordingly, the adjustment of 215 days of patent term was entered in error. The period of adjustment of 215 days will be removed as it is not warranted.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is **zero (0) days** (384 days of Office delay less 385 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee as set forth in 37 CFR 1.18(e). The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

Christina Tartera Donnell
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of updated PAIR screen

Day : Wednesday

PALM INTRANET

Date: 2/10/2010

Time: 19:06:55

PTA Calculations for Application: 09/912072

Application Filing Date:	07/24/2001	PTO Delay (PTO):	936
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	385
Post-Issue Petitions:	0	Total PTA (days):	0
PTO Delay Adjustment:	-552		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
108	02/10/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		215	
107	02/10/2010	ADJUSTMENT OF PTA CALCULATION BY PTO		337	
98	10/06/2009	MAIL NOTICE OF ALLOWANCE	4		86
97	10/01/2009	DOCUMENT VERIFICATION			
96	10/01/2009	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
95	09/28/2009	NOTICE OF ALLOWABILITY			
92	08/04/2009	DATE FORWARDED TO EXAMINER			
91	07/31/2009	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
90	08/04/2009	DATE FORWARDED TO EXAMINER			
89	07/31/2009	REQUEST FOR CONTINUED EXAMINATION (RCE)			
88	08/04/2009	DISPOSAL FOR A RCE / CPA / R129			
87	07/31/2009	WORKFLOW - REQUEST FOR RCE - BEGIN			
86	06/02/2009	MAIL BPAI DECISION ON APPEAL - AFFIRMED	215		77
85	06/02/2009	BPAI DECISION - EXAMINER AFFIRMED			
83	10/24/2008	DOCKETING NOTICE MAILED TO APPELLANT			
82	10/24/2008	ASSIGNMENT OF APPEAL NUMBER			
81	08/14/2008	APPEAL AWAITING BPAI DOCKETING			
80	07/11/2008	MAIL REPLY BRIEF NOTED BY EXAMINER			
79	07/09/2008	REPLY BRIEF NOTED BY EXAMINER			
78	06/30/2008	DATE FORWARDED TO EXAMINER			
77	06/30/2008	REPLY BRIEF FILED			
76	05/05/2008	EXAM. ANS. REVIEW COMPLETE			
75	04/30/2008	MAIL EXAMINER'S ANSWER	337		53
74	04/28/2008	EXAMINER'S ANSWER TO APPEAL BRIEF			

73	02/14/2008	APPEAL BRIEF REVIEW COMPLETE			
72	02/14/2008	DATE FORWARDED TO EXAMINER			
71	02/01/2008	APPEAL BRIEF FILED			
70	01/28/2008	NOTICE -- DEFECTIVE APPEAL BRIEF			
69	11/19/2007	APPEAL BRIEF REVIEW COMPLETE			
68	11/19/2007	DATE FORWARDED TO EXAMINER			
67.1	11/12/2007	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
67	11/12/2007	APPEAL BRIEF FILED			
66	11/19/2007	DATE FORWARDED TO EXAMINER			
65	11/12/2007	AMENDMENT/ARGUMENT AFTER NOTICE OF APPEAL			
64	11/02/2007	NOTICE -- DEFECTIVE APPEAL BRIEF			
63	09/10/2007	APPEAL BRIEF REVIEW COMPLETE			
62	09/10/2007	DATE FORWARDED TO EXAMINER			
61.1	08/20/2007	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
61	08/20/2007	APPEAL BRIEF FILED			
60	08/08/2007	NOTICE -- DEFECTIVE APPEAL BRIEF			
59	06/07/2007	APPEAL BRIEF REVIEW COMPLETE			
58	06/07/2007	DATE FORWARDED TO EXAMINER			
57.1	05/02/2007	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
57	05/02/2007	APPEAL BRIEF FILED			
56	04/12/2007	NOTICE -- DEFECTIVE APPEAL BRIEF			
55	04/10/2007	APPEAL BRIEF REVIEW COMPLETE			
54	04/10/2007	DATE FORWARDED TO EXAMINER			
53.1	01/29/2007	DEFECTIVE / INCOMPLETE APPEAL BRIEF FILED			
53	01/29/2007	APPEAL BRIEF FILED			
52	11/27/2006	NOTICE OF APPEAL FILED		25	50
51	11/27/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
50	08/02/2006	MAIL FINAL REJECTION (PTOL - 326)			
49	07/24/2006	FINAL REJECTION			
48	05/12/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
47	05/18/2006	DATE FORWARDED TO EXAMINER			
46	05/12/2006	RESPONSE AFTER NON-FINAL ACTION		94	42

45	05/04/2006	MAIL NOTICE OF INFORMAL OR NON-RESPONSIVE AMENDMENT			
44	02/07/2006	AFFIDAVIT(S) (RULE 131 OR 132) OR EXHIBIT(S) RECEIVED			
43	02/16/2006	DATE FORWARDED TO EXAMINER			
42.1	02/07/2006	INFORMAL OR NON-RESPONSIVE AMENDMENT AFTER EXAMINER ACTION			
42	02/07/2006	RESPONSE AFTER NON-FINAL ACTION		89	38
41	02/07/2006	REQUEST FOR EXTENSION OF TIME - GRANTED			
40	12/21/2005	MAIL EXAMINER INTERVIEW SUMMARY (PTOL - 413)			
39	12/02/2005	EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)			
38	08/10/2005	MAIL NON-FINAL REJECTION			
37	08/08/2005	NON-FINAL REJECTION			
36	06/02/2005	DATE FORWARDED TO EXAMINER			
35	05/23/2005	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE			
34	06/02/2005	DATE FORWARDED TO EXAMINER			
33	05/23/2005	REQUEST FOR CONTINUED EXAMINATION (RCE)		86	29
32	06/02/2005	DISPOSAL FOR A RCE / CPA / R129			
31	05/23/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
30	05/23/2005	WORKFLOW - REQUEST FOR RCE - BEGIN			
29	11/26/2004	MAIL FINAL REJECTION (PTOL - 326)			
28	11/24/2004	FINAL REJECTION			
27.7	09/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
27	09/09/2004	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
26	09/09/2004	NEW OR ADDITIONAL DRAWING FILED			
25	09/21/2004	DATE FORWARDED TO EXAMINER			
24	09/09/2004	RESPONSE AFTER NON-FINAL ACTION		91	20
23	09/09/2004	REQUEST FOR EXTENSION OF TIME - GRANTED			
22	09/09/2004	WORKFLOW INCOMING AMENDMENT IFW			
21	05/13/2004	CASE DOCKETED TO EXAMINER IN GAU			
20	03/10/2004	MAIL NON-FINAL REJECTION	30		17

19	03/08/2004	NON-FINAL REJECTION			
18	11/01/2003	DATE FORWARDED TO EXAMINER			
17	10/09/2003	RESPONSE TO ELECTION / RESTRICTION FILED			
16	09/09/2003	MAIL RESTRICTION REQUIREMENT	350		-1
15	09/08/2003	REQUIREMENT FOR RESTRICTION / ELECTION			
14	06/24/2003	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
13	04/18/2003	CASE DOCKETED TO EXAMINER IN GAU			
12	05/11/2002	X-PRE-LEGAL COMPLETE NEW CASE			
11.7	12/10/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
11	12/10/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
10	05/11/2002	CASE DOCKETED TO EXAMINER IN GAU			
9	03/28/2002	APPLICATION DISPATCHED FROM OIPE			
8	03/27/2002	APPLICATION IS NOW COMPLETE			
7	11/07/2001	A STATEMENT BY ONE OR MORE INVENTORS SATISFYING THE REQUIREMENT UNDER 35 USC 115, OATH OF THE APPLIC			
6	09/27/2001	NOTICE MAILED--APPLICATION INCOMPLETE-- FILING DATE ASSIGNED			
5	09/27/2001	CORRESPONDENCE ADDRESS CHANGE			
4	09/12/2001	CRF IS GOOD TECHNICALLY / ENTERED INTO DATABASE			
3	07/31/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
2	07/24/2001	CRF DISK HAS BEEN RECEIVED BY PREEXAM / GROUP / PCT			
1	07/24/2001	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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